

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ROBERT MESTAS,

Plaintiff,

v.

CHW GROUP INC. dba CHOICE HOME
WARRANTY, VICTOR MANDALAWI and
Jane Does 1-10,

Defendants.

Civil Case No.: 2019-cv-_____

**DEFENDANTS CHW GROUP INC. dba
CHOICE HOME WARRANTY and VICTOR
MANDALAWI'S**

NOTICE OF REMOVAL

TO: The Clerk of the Court
U.S. District Court
District of New Mexico
Pete V. Domenici U.S. Courthouse
333 Lomas Blvd NW, Suite 270
Albuquerque, NM 87102

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a) and 1446, with full reservations of all defenses, Defendants CHW Group Inc. dba Choice Home Warranty (“CHW”) and Victor Mandalawi (“Mandalawi”) (collectively, the “Defendants”), hereby jointly remove the above-entitled civil action, and all claims and causes of action therein from the Second Judicial District Court, Bernalillo County, New Mexico to the United States District Court for the District of Mexico. In support of this Notice of Removal, Defendants state as follows:

I. Background

1. On July 25, 2019, an action was commenced by the filing of a Complaint for the Telephone Consumer Protection Act, 47 U.S. § 227 et. seq. (“TCPA”), the New Mexico Unfair

Practices Act (“UPA”) and common law claims in the County of Bernalillo, New Mexico, Second Judicial Court, entitled *Robert Mestas v. CHW Group Inc. dba Choice Home Warranty, Victor Mandalawi and Jane Does 1-10*, as Case No. D-202-CV-2019-05881.

2. This suit arises from a number of telephone calls to Plaintiff’s telephone allegedly placed by Defendants and/or that Plaintiff alleges violated the TCPA along with the UPA and various other common law claims.

3. Defendants were personally served with copies of the Summonses and Complaint on August 1, 2019.

4. Pursuant to the Summonses accompanying the Complaint, Defendants must appear in Court in the Second Judicial District on August 31, 2019.

5. True and correct copies of Plaintiff’s Summonses and Complaint are annexed hereto as ***Exhibit A***.

6. As all procedural and substantive requirements related to the removal of this action have been performed or otherwise satisfied, as reflected below, Defendants now timely remove this action to this Court.

7. Defendants CHW and Mandalawi each agree and consent to the removal of this action to this Court.

II. Basis for Jurisdiction

8. This Court has original subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a) and 1446. This claim should have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all claims and actions arising under the “Constitution, laws or treaties of the United States”.

9. Plaintiff's Complaint asserts violations of a federal law, namely the TCPA. *See generally* Ex. A. The Supreme Court of the United States in *Mims v. Arrow Financial Services LLC*, 132 S. Ct. 740, 747-53 (2012), addressed the issue of whether the federal district courts have jurisdiction over TCPA claims, holding that such a claim is, in fact, one that "arises under" the laws of the United States. As such, this Court has federal question jurisdiction over this matter.

10. Moreover, pursuant to 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." Thus, this Court has federal question jurisdiction.

11. The Court also has supplemental jurisdiction over any state law and common law claims, as such claims are related to the TCPA claim over which this Court has original jurisdiction that it forms part of the same case and controversy under Article III of the U.S. Constitution.

III. Defendants have Satisfied all the Procedural Requirements for Removal

12. Pursuant to 28 U.S.C. § 1441(a), the present action may be removed to the United States District Court for the District of New Mexico.

13. Defendants were personally served with copies of the Summonses and Complaint on August 1, 2019.

14. Defendants' Notice of Removal is therefore timely under 28 U.S.C. § 1446(b).

15. Defendants will promptly serve a copy of this Notice of Removal upon all counsel

of record and will file a copy of this Notice with the Clerk of the Court of the Second Judicial District, Bernalillo, New Mexico pursuant to 28 U.S.C. § 1446(d).

16. In accordance with 28 U.S.C. § 1446, copies of all process and papers received by Defendants in the state court action have been attached to this Notice of Removal as ***Exhibit A***.

17. Pursuant to Local Rule 81.1(a), copies of all records and proceedings from the state court action be filed within twenty-eight (28) days after the filing of this Notice of Removal.

IV. Venue

18. Venue is proper in this District Court pursuant to 28 U.S.C. §1441(a), because this action was brought in the Second Judicial District, Bernalillo, New Mexico, which is in the same District as the United States District Court for the District of New Mexico.

19. Defendants hereby reserve all rights to assert any defense or affirmative matter, including, without limitation, motions to dismiss pursuant to Fed.R.Civ.P. 12, as well as to amend or supplement this Notice of Removal.

V. Conclusion

Defendants respectfully request that this Court proceed with this lawsuit as if it had been originally filed in this Court, and that the Court grant Defendants such other relief to which they are justly entitled.

[SIGNATURE FOLLOWS]

Dated: August 30, 2019

Respectfully submitted,

By: *s/ A. Paul Heeringa*

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CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2019, I filed the foregoing electronically through the Court's CM/ECF system, which caused the following parties or counsel to be served by electronic means:

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/s/ A. Paul Heeringa

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